

IB

Union Calendar No. 126

100TH CONGRESS
1ST SESSION**H. R. 1212**

[Report No. 100-208]

To prevent the denial of employment opportunities by prohibiting the use of lie detectors by employers involved in or affecting interstate commerce.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 24, 1987

Mr. WILLIAMS (for himself, Mr. HAWKINS, Mr. JEFFORDS, Mr. FORD of Michigan, Mr. CLAY, Mr. BIAGGI, Mr. MURPHY, Mr. KILDEE, Mr. MARTINEZ, Mr. OWENS of New York, Mr. BOUCHER, Mr. HAYES of Illinois, Mr. PERKINS, Mr. DYMALLY, Mr. PENNY, Mr. ATKINS, Mr. TAUKE, Mr. HENRY, Mr. BROOKS, Mr. MCKINNEY, Mr. RODINO, Mr. COURTER, Mr. KASTENMEIER, Mr. LEVIN of Michigan, Mr. HOWARD, Mr. EDWARDS of California, Ms. OAKAR, Mr. CONYERS, Mr. BERMAN, Mr. LOWRY of Washington, Mr. LELAND, Mr. SCHEUER, Mr. OBERSTAR, Mr. FAUNTROY, Mr. STAGGERS, Mr. ROBINSON, Mr. KANJORSKI, Mr. FLORIO, Mr. MARKEY, Mrs. BENTLEY, Mr. JONES of North Carolina, Mr. ANDREWS, Mr. MRAZEK, Mr. SCHUMER, Mr. GEPHARDT, Mr. EVANS, Mr. LEACH of Iowa, Mrs. BOXER, Mr. SYNAR, Mr. CONTE, Mr. GLICKMAN, Mr. BORSKI, Mr. HERTEL, Mr. RAHALL, Mr. DURBIN, Mr. AKAKA, Mr. VISCLOSKEY, Mr. GAYDOS, Mr. RICHARDSON, Mr. RANGEL, Mr. TOWNS, Mr. BOEHLERT, Mr. FAZIO, Mr. RIDGE, Mr. ACKERMAN, Mr. WHEAT, Mr. DELLUMS, Mr. FEIGHAN, Mrs. COLLINS, Mr. FEARN, Mr. KOLTER, Mr. DIXON, Mr. DAVIS of Michigan, Mrs. JOHNSON of Connecticut, Mr. CARR, Mr. SKELTON, Mr. CROCKETT, Mr. MORRISON of Connecticut, Mr. BROWN of California, Mr. SMITH of Iowa, Mr. SAVAGE, Mr. STOKES, Mr. GRAY of Illinois, Mr. BOSCO, Mr. WALGREN, Mr. GENDENSON, Mr. DONNELLY, Mr. LEVINE of California, Mr. GONZALEZ, Mr. TRAFICANT, Mr. STARK, Mr. WOLPE, Mr. GRAY of Pennsylvania, Mr. NEAL, Mr. STUDDS, Mr. SABO, Mr. TORRES, Mr. OLIN, Ms. KAPTUR, Mr. MATSUI, Mr. GARCIA, Mr. SIKORSKI, Mr. BONIOR of Michigan, Mr. WISE, Mr. GUARINI, Ms. SNOWE, Mr. BUSTAMANTE, Mrs. SCHROEDER, Mr. AUCCINI, Mr. SWIFT, Mr. RINALDO, Mr. VENTO, Mr. MANTON, Mr. KOSTMAYER, Mrs. SCHNEIDER, Mr. BONKER, Mr. DYSON, Mr. MINETA, Mr. HAMILTON, Mr. McLAUGHLIN, Mr. FOGLIETTA, Mr. DORGAN of North Dakota, Mr. NELSON of Utah, Mr. ASHIN, Mr. ST GERMAIN, and

Mr. BOLAND introduced the following bill which was referred to the Committee on Education and Labor

JULY 9, 1987

Additional sponsors: Mr. WYDEN, Mrs. KENNELLY, Mr. MOAKLEY, Mr. MAVEROULES, Mr. MURTHA, Mr. MOODY, Mr. FOLEY, Mr. MOLLOHAN, Mr. KEMP, Mr. VOLKMER, Mr. ESPY, Mr. TRAXLER, Mr. RITTER, Mr. SOLARZ, Mr. THOMAS A. LUKE, Mr. DOWNEY of New York, Mr. DEFazio, Mr. HOYER, Mr. MCFARLAND, Mrs. MARTIN of Illinois, Mr. CARPER, Mr. OFFY, Mr. UDALL, Mr. MILLER of California, Mr. FARMER, Mr. ROSEN, Mr. HOCHBREUCKNER, Mr. MILLER of Washington, Mr. WEISS, Mr. JONTZ, Mr. COYNE, Mr. ROYCE, Mr. FLAKE, Mr. COELHO, Mr. KENNEDY, Mr. MCCLOSKEY, Mr. CADDEN, Ms. SLAUGHTER of New York, Mr. BERNAN, Mr. LEWIS of Georgia, Mr. HORTON, Mr. OWENS of Utah, Mr. DWYER of New Jersey, Mr. PEASE, Mr. GILMAN, Mr. LANTOS, Mr. LEHMAN of California, Mr. KLECZKA, Mr. SMITH of New Jersey, Mr. McMILLEN of Maryland, Mr. LIPINSKI, Mr. DE LUGO, Mr. COOPER, Mr. BRUCE, Mr. WILSON, Mr. FORD of Tennessee, and Mr. YATES

JULY 9, 1987

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in italics.]

[For text of introduced bill, see copy of bill as introduced on February 24, 1987.]

A BILL

To prevent the denial of employment opportunities by prohibiting the use of lie detectors by employers involved in or affecting interstate commerce.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled.*

3 *SECTION 1. SHORT TITLE.*

4 *This Act may be cited as the "Employee Polygraph*
5 *Protection Act".*

1 **SEC. 2. PROHIBITIONS ON LIE DETECTOR USE.**

2 *It shall be unlawful for any employer engaged in com-*
3 *merce or in the production of goods for commerce—*

4 *(1) directly or indirectly, to require, request, sug-*
5 *gest, or cause any employee or prospective employee to*
6 *take or submit to any lie detector test;*

7 *(2) to use, accept, refer to, or inquire concerning*
8 *the results of any lie detector test of any employee or*
9 *prospective employee;*

10 *(3) to discharge, dismiss, discipline in any*
11 *manner, or deny employment or promotion to, or*
12 *threaten to take any such action against—*

13 *(A) any employee or prospective employee*
14 *who refuses, declines, or fails to take or submit to*
15 *any lie detector test; or*

16 *(B) any employee or prospective employee on*
17 *the basis of the results of any lie detector test; or*

18 *(4) to discharge or in any manner discriminate*
19 *against an employee or prospective employee because—*

20 *(A) such employee or prospective employee*
21 *has filed any complaint or instituted or caused to*
22 *be instituted any proceeding under or related to*
23 *this Act;*

24 *(B) such employee or prospective employee*
25 *has testified or is about to testify in any such pro-*
26 *ceedings; or*

1 (C) of the exercise by such employee, on
2 *behalf of himself or others, of any right afforded*
3 *by this Act.*

4 **SEC. 3. NOTICE OF PROTECTION.**

5 *The Secretary of Labor shall prepare, have printed, and*
6 *distribute a notice that employers are prohibited by this Act*
7 *from using a lie detector test on any employee or prospective*
8 *employee. Each employer shall post and keep posted, in con-*
9 *spicuous places upon its premises where notices to employees*
10 *and prospective employees are customarily posted, the notice*
11 *distributed by the Secretary under this section.*

12 **SEC. 4. AUTHORITY OF THE SECRETARY OF LABOR.**

13 **(a) IN GENERAL.—***The Secretary of Labor shall—*

14 (1) *issue such rules and regulations as may be*
15 *necessary or appropriate for carrying out this Act;*

16 (2) *cooperate with regional, State, local, and other*
17 *agencies, and cooperate with and furnish technical as-*
18 *sistance to employers, labor organizations, and employ-*
19 *ment agencies to aid in effectuating the purposes of*
20 *this Act; and*

21 (3) *make investigations and inspections and re-*
22 *quire the keeping of records necessary or appropriate*
23 *for the administration of this Act.*

24 **(b) SUPERVISORY AUTHORITY.—***The Secretary of Labor*

25 *may, in his discretion, require any employer to*

1 *have the authority contained in sections 9 and 10 of the Fed-*
2 *eral Trade Commission Act (15 U.S.C. 49, 50).*

3 **SEC. 5. ENFORCEMENT PROVISIONS.**

4 **(a) CIVIL PENALTIES.—***(1) Subject to paragraph*
5 *(2)—*

6 *(A) any employer who violates section 3 may be*
7 *assessed a civil money penalty not to exceed \$100 for*
8 *each day of the violation; and*

9 *(B) any employer who violates any other provi-*
10 *sion of this Act may be assessed a civil penalty not to*
11 *exceed \$10,000.*

12 **(2)** *In determining the amount of any penalty under*
13 *paragraph (1), the Secretary shall take into account the pre-*
14 *vious record of the person in terms of compliance with this*
15 *Act and the gravity of the violation.*

16 **(3)** *Any civil penalty assessed under this subsection*
17 *shall be collected in the same manner as is required by sub-*
18 *sections (b) through (e) of section 503 of the Migrant and*
19 *Seasonal Agricultural Worker Protection Act (29 U.S.C.*
20 *1853) with respect to civil penalties assessed under subsec-*
21 *tion (a) of such section.*

22 **(b) INJUNCTIVE ACTIONS BY THE SECRETARY.—***The*
23 *Secretary may bring an action to restrain violations of this*
24 *Act. The district courts of the United States shall have juris-*
25 *isdiction, for cause shown, to issue temporary or permanent*

1 *restraining orders and injunctions to require compliance with*
 2 *this Act.*

3 **(c) PRIVATE CIVIL ACTIONS.—***(1) An employer who*
 4 *violates the provisions of this Act shall be liable to the em-*
 5 *ployee or prospective employee affected by such violation. An*
 6 *employer who violates the provisions of this Act shall be*
 7 *liable for such legal or equitable relief as may be appropriate,*
 8 *including (without limitation) employment, reinstatement,*
 9 *promotion, the payment of wages lost, and an additional*
 10 *amount as consequential damages.*

11 **(2)** *An action to recover the liability prescribed in para-*
 12 *graph (1) may be maintained against the employer in any*
 13 *Federal or State court of competent jurisdiction by any one*
 14 *or more employees or prospective employees (or any person*
 15 *acting on behalf of such employee or employees) for or in*
 16 *behalf of himself or themselves and other employees or pro-*
 17 *spective employees similarly situated. No such civil action*
 18 *may be commenced more than 3 years after the date of the*
 19 *alleged violation.*

20 **(3)** *The court shall award to a prevailing plaintiff in*
 21 *any action under this subsection the reasonable costs of such*
 22 *action, including attorneys' fees.*

23 **SEC. 6. EXEMPTIONS.**

24 **(a) NO APPLICATION TO GOVERNMENTAL EMPLOY-**
 25 **TEES.—***The provisions of this Act shall not apply with respect*

1 *to the United States Government, a State or local govern-*
2 *ment, or any political subdivision of a State or local govern-*
3 *ment.*

4 (b) *NATIONAL DEFENSE AND SECURITY EXEMP-*
5 *TION.—(1) Nothing in this Act shall be construed to prohibit*
6 *the administration, in the performance of any counterintelli-*
7 *gence function, of any lie detector test to—*

8 (A) *any expert or consultant under contract to the*
9 *Department of Defense or any employee of any con-*
10 *tractor of such department; or*

11 (B) *any expert or consultant under contract with*
12 *the Department of Energy in connection with the*
13 *atomic energy defense activities of such department or*
14 *any employee of any contractor of such department in*
15 *connection with such activities.*

16 (2) *Nothing in this Act shall be construed to prohibit the*
17 *administration, in the performance of any intelligence or*
18 *counterintelligence function, of any lie detector test to—*

19 (A)(i) *any individual employed by, or assigned or*
20 *detailed to, the National Security Agency or the Cen-*
21 *tral Intelligence Agency, (ii) any expert or consultant*
22 *under contract to the National Security Agency or the*
23 *Central Intelligence Agency, (iii) any employee of a*
24 *contractor of the National Security Agency or the Cen-*
25 *tral Intelligence Agency, or (iv) any individual apply-*

1 ing for a position in the National Security Agency or
2 the Central Intelligence Agency; or

3 (B) any individual assigned to a space where sen-
4 sitive cryptologic information is produced, processed, or
5 stored for the National Security Agency or the Central
6 Intelligence Agency.

7 (c) EXEMPTION FOR FBI CONTRACTORS.—Nothing
8 in this Act shall be construed to prohibit the administration,
9 in the performance of any counterintelligence function, of
10 any lie detector test to an employee of a contractor of the
11 Federal Bureau of Investigation of the Department of Justice
12 who is engaged in the performance of any work under the
13 contract with such Bureau.

14 **SEC. 7. DEFINITIONS.**

15 As used in this Act—

16 (1) the term "lie detector test" includes any exam-
17 ination involving the use of any polygraph, decepto-
18 graph, voice stress analyzer, psychological stress eval-
19 uator, or any other similar device (whether mechanical
20 or electrical) which is used, or the results of which are
21 used, for the purpose of rendering a diagnostic opinion
22 regarding the honesty of an individual;

23 (2) the term "employer" includes an agent, inde-
24 pendent contractor, employee, or any other person
25 acting for or on behalf of an individual in the performance of

1 employer in relation to an *employee* or prospective
2 employee; and

3 (3) the term "commerce" has the meaning provid-
4 ed by section 3(b) of the *Fair Labor Standards Act of*
5 1938 (29 U.S.C. 203(b)).

6 SEC. 8. *EFFECTIVE DATE.*

7 *This Act shall take effect 6 months after the date of its*
8 *enactment.*